

REMARKS/ARGUMENTS

Claims 1-31 are pending in the application. By this amendment, claims 24 and 30 have been amended, and new claims 32-50 have been added. Applicants acknowledge with thanks the Examiner's determination of allowable subject matter in claims 13, 16, 17, and 26-31.

Applicants believe the amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto.

Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Claims 1 and 18-20 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent Application Publication to Pruche et al. ("Pruche"). The rejection is respectfully traversed.

It is noted that the date of publication of the Pruche application is June 12, 2003. As this date is after the priority date of the present application, April 21, 2003, the Pruche application publication does not qualify as 102(a) prior art. Applicants assume the Office Action intended to use the Pruche application publication as 102(e) prior art based on its critical date of November 2, 2002, which is the U.S. filing date of the Pruche application. Nonetheless, attached hereto are declarations of the inventors, J. Dirk VerMeulen, John D. VerMeulen, and William Dommer, pursuant to 37 C.F.R. § 131, attesting to their reduction to practice of the claimed invention prior to the critical date of Pruche or at least a conception of the claimed invention prior to the critical date of Pruche, with due diligence to a reduction to practice of the claimed invention subsequent to the critical date of Pruche.

Consequently, the cited Pruche patent application publication is not prior art to the claimed invention, and the rejection must fall.

By entering the declarations, Applicants do not submit that Pruche discloses the invention of claims 1 and 18-20.

Claims 24 and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,365,363 to Parfenov et al. ("Parfenov"). The rejection is respectfully traversed.

Parfenov discloses a method of determining skin tissue cholesterol. The method comprises exposing the skin surface to a dosed amount of an aqueous solution of an enzyme with a surfactant and evaluating the concentration of cholesterol in a reaction solution. The evaluation of the concentration of cholesterol is carried out by direct measurement of the concentration of hydrogen peroxide in the reaction solution. The measurement can be conducted in a laboratory with the aid of an electrochemical electrode or a photometer. Outside the laboratory, a colorimetric indicator strip can be immersed in the reaction solution, and the change in the color of strip is determined by the concentration of hydrogen peroxide. Alternatively, a portable reflective photometer can be used to determine the concentration of hydrogen peroxide.

Claim 24, as amended, is direct to a method of employing a flowable indicator for characterizing skin condition. The method comprises the following steps: applying the flowable indicator to a desired area of skin, wherein the indicator is reactive with at least one substance found on the skin; activating the flowable indicator through a reaction of the indicator with the at least one substance found on the skin after a period of time to effect a visually discernable change of the flowable indicator; and comparing the visually discernable change of the activated flowable indicator to a reference to characterize skin condition.

Parfenov does not disclose, as required by claim 24, a method having the step of activating a flowable indicator through a reaction that effects a visually discernable change of the flowable indicator. In Parfenov, the activation of the aqueous solution effects generation of hydrogen peroxide, which does not correspond to a visually discernable change. In some embodiments, the concentration of generated hydrogen peroxide is measured based on the optical density of the reaction solution; however, the optical density or any change thereof is not visually discernable as it cannot be determined by sight. A tool, such as a photometer, is necessary for quantifying the optical density and, thus, the concentration of hydrogen peroxide. In short, the generation of the hydrogen peroxide in the aqueous solution of Parfenov does not reach a visually discernable change in the flowable indicator, as required by claim 24. Because Parfenov does not disclose every element of claim 24, Parfenov does not anticipate claim 24. Furthermore, the method of claim 24 would not be obvious in view of Parfenov. Claim 24 is, therefore, patentable over Parfenov.

Claim 25 depends from claim 24 and is patentable over Parfenov for at least the same reasons that claim 24 is patentable over Parfenov.

Claims 2-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of U.S. Patent Application Publication No. 2004/0067890 to Gupta (“Gupta”). The rejection is respectfully traversed.

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Gupta does not disclose or suggest the elements of claims 2-5. The rejection must fall.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of Gupta and further in view of U.S. Patent Application Publication No. 2003/0171247 to Meine et al. (“Meine”). The rejection is respectfully traversed.

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Gupta and Meine do not disclose or suggest the elements of claims 6 and 7. The rejection must fall.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of Gupta, Meine, and U.S. Patent No. 6,309,655 to Minnix (“Minnix”). The rejection is respectfully traversed.

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Gupta, Meine, and Minnix do not disclose or suggest the elements of claims 8 and 9. The rejection must fall.

Claims 10, 11, 14, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of U.S. Patent No. 6,733,766 to Gott et al. (“Gott”). The rejection is respectfully traversed.

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Gott does not disclose or suggest the elements of claims 10, 11, 14, and 15. The rejection must fall.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of U.S. Patent No. 3,993,742 to Rey et al. (“Rey”). The rejection is respectfully traversed.

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Examiner: Zoe E. Baxter
Group Art Unit: 3735

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Rey does not disclose or suggest the elements of claim 12. The rejection must fall.

Claims 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pruche in view of Minnix. The rejection is respectfully traversed.

The Pruche patent application publication is not prior art, and, therefore, not properly the basis for a sustainable rejection. Absent Pruche, Minnix does not disclose or suggest the elements of claims 21-23. The rejection must fall.

Applicants have added new claims 32-50, which distinguish over the prior art and should be allowed. Independent claim 32 incorporates the concepts from claims 1 and 13; independent claim 33 incorporates the concepts from claims 1 and 16; independent claim 34 incorporates the concepts from claims 1 and 17; independent claim 35 incorporates the concepts from claims 1 and 26; independent claim 38 incorporates the concepts from claims 1 and 29; and independent claim 39 incorporates the concepts from claims 1 and 30.

It is respectfully submitted that the claims are allowable over the prior art of record.
Prompt notification of allowability is respectfully requested.

Respectfully submitted,

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Dated: February 14, 2007

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